

1866

## Annual Report of the Attorney General to the Legislature of Minnesota [1865]

Minnesota Attorney General

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### Recommended Citation

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ANNUAL REPORT

OF THE

ATTORNEY GENERAL,

TO THE

LEGISLATURE OF MINNESOTA.

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## REPORT.

STATE OF MINNESOTA,  
ATTORNEY GENERAL'S OFFICE, }  
St. Paul, Dec. 5th, 1865.

*His Excellency, Stephen Miller:*

SIR:—Herewith I have the honor to transmit my annual report of the business of this office:

SUPREME COURT, JANUARY TERM, 1865.

State of Minnesota agst. Thomas H. Shippey.

Indictment for murder. Judgment affirmed.

State of Minnesota agst. W. H. Grant.

Action on recognisance. Judgment for State.

State of Minnesota agst. Henry Miller.

Larceny. Judgment reversed.

JULY TERM, 1865.

State of Minnesota agst. Dinein.

Indictment for assault with intent to kill. Not determined.

DISTRICT COURT, RICE COUNTY, MAY TERM, 1865.

State of Minnesota agst. George W. Batchelder.

State of Minnesota agst. Thomas H. Buckham.

School land cases. Judgment for State.

DISTRICT COURT, DAKOTA COUNTY.

State of Minnesota agst. Hugh McCue.

Indictment for the murder of George Arnold.

At the request of the County Attorney, I attended the

106497



January term of this court for the prosecution of the defendant in this action.

A previous trial involving the same questions having unexpectedly resulted in the acquittal of the defendant, it was evident that any attempt to secure an impartial trial in that county must fail, and a change of venue was moved for by the State, to Washington county and obtained.

I also attended at the April term of the court in this county, but owing to the sickness of material witnesses, the case was continued until the November term, at which time, I was unable to be present.

The case was, at that term, brought on for trial and ably conducted by the County Attorney of Dakota county, T. R. Huddleston, Esq. The trial resulting in the verdict of manslaughter in the 2d degree.

Much credit is due Mr. Huddleston, for the zeal, energy and ability in the discharge of his duties which he has displayed in the management of these important cases.

#### SCHOOL LANDS.

The case of the State vs. Batchelder, which has been in litigation since 1860, was concluded, and a final judgment obtained in behalf of the State at the May term of the District Court of Rice county.

The time for appeal has expired, but until the expiration of a year from the entry of judgment, the technical right to a writ of error to remove the case to the Supreme Court, remains in the defendant. Every material legal proposition involved in the issue, has been determined against the defendant, by the Supreme Court of the United States, while the issues of fact were all found against him in the District Court.

I see, therefore, no ground for apprehension; that the points, as thus determined, can be reversed, should further proceedings be had.

The title of the State to her public lands constitutes her most important and extensive interest.

Few that have not given the subject special attention are aware of the magnitude and value of her school land interest alone.

There are several questions of great importance in this connection, which I had hoped before this, to put in process of final adjudication, by the proper judicial tribunals.



Of these, the claim of the State to the rich and valuable school sections upon the Winnebago reservation and that of the Sioux half-breeds, are the most important.

Actions would have been instituted before this, had it not been for the consideration, that upon some, though not all, of the questions involved, the case of the State vs. Batchelder, was regarded as a test case, and I was loth to involve the State in the expense of other actions, until that case was finally and definitely determined.

Since the judgment in that case in May last, I have been in correspondence with the County Attorney of Waseca county, in which county, from motives of personal convenience, I preferred to bring the action, with a view to the selection of a tract which would fully test the question.

I have not desired to bring an action against a resident for two reasons: First—I did not wish to oppress by an extensive litigation one of our own citizens; Secondly—these settlers are generally poor, and would be unable to contest the case to a final determination, while by neglecting to do so the value of the case as a test case would be lost.

I have therefore selected a tract owned by a wealthy foreign corporation, but as these titles are not yet fully perfected of record, I have not yet been able to obtain all the requisite data necessary to enable me to draw the complaint.

The grounds upon which the claim of the State is based, were stated in my report of May, 1863.

I deem it of great importance, that actions should be instituted in these cases, as well as in several flagrant instances of school land frauds, resting upon the same state of facts as those in the case of the State vs. Batchelder, unless the State is prepared to quietly relinquish a claim upon tracts of land, which in other States not so magnificently endowed as our own, would of themselves be regarded as a munificent school fund.

The claim of the State, both to school sections on the Winnebago and Sioux half-breed reservations, has been prosecuted and fully argued before the department of the interior which has decided adversely to the State, while admitting the force of the arguments in support of our rights, the decision being based upon the ground principally, that as executive officers the laws must be executed



as they find them, leaving all questions of constitutionality or conflict with the rights of States to be determined by a more competent tribunal.

TAXATION OF HOMESTEADS AND STOCKHOLDERS IN NATIONAL BANKS.

The assertion of the right to tax these species of property has excited great opposition among interested parties. As the one involves the exemption from public burdens of the largest moneyed interest in the State, while the other embraces most of the Government lands hereafter to be disposed of, these questions assume proportions of great magnitude, and are becoming of vital importance to the prosperity of the State.

As a matter of public policy, I entertain no doubt that the claim of the right to tax in these cases should be steadily asserted by the State, until a competent tribunal shall have otherwise determined. It would hardly seem the part of wisdom so long as the claim rests as it confessedly does upon plausible foundations, for State officials to yield it without a struggle in advance of judicial determination.

The tax law requires some slight modifications to conform it to the act of Congress with reference to the taxation of stockholders in these institutions. These will be pointed out by the Auditor. If it shall be determined that homesteads are exempt from State taxation until the expiration of the period of five years, during which the settler holds a conditional title only, the fatal consequences to the west particularly, are apparent as in the new States yet to be formed, and in a large portion of our own State almost the entire public domain will be taken under the homestead law.

It is upon real estate chiefly, that all new States must depend for the revenue which supports both State and local government; deprive them of this, and it is difficult to see how the expenses of government can be met.

It has been determined by the Supreme Court of the United States, and by those of many Western States, that land becomes subject to State taxation from the moment the equitable title vests in the purchaser, notwithstanding that by reason of the delay in the issuance of the patent, the legal title remains in the government.



A reference to the homestead law will disclose the fact that the settler takes a conditional title subject to revert to the government upon breach of the condition from the date of his entry or filing, that thereafter the land subject to certain conditions, is treated as his property by the law, it passes by will or decent, and may be sold by administrators for the benefit of infant children.

It is objected, however, that purchasers will not bid at a tax sale upon so doubtful a title. Let the claim be persisted in, and brought before the courts for adjudication, and decided as I think it will be, in affirmance of the right, and all difficulties of this kind will cease, and the taxes paid without objection.

The mere fact that upon the first assertion of the claim, purchasers hesitate, is no reason for abandoning it without a trial of its validity.

Objection to this claim has also been made on account of the difficulty of enforcing it. A reference to the decided cases will afford a sufficient answer to this objection. The interest passed by the tax deed is the interest of the settler, whether more or less, leaving that of the Government or its grantees untouched.

If the claim is forfeited for breach of condition to the Government, of course the claim of the State fails, but if the settler obtains his patent, he will hold the legal estate thus acquired in trust for the purchaser at the tax sale.

It is but a few years since the same objections were as confidently asserted against the right of the State to tax pre-empted lands prior to the issuance of the patent, yet the right is now universally conceded. The present question is a new case, and we may expect opposition in the outset, but if persevered in, I believe the time is not far distant when this right will be as well settled and universally acknowledged as in pre-emptions. A contrary opinion has been expressed by the Commissioner of the General Land Office, which is greatly relied upon by settlers objecting to the right of taxation. The duties of that officer are confined to determining the rights of parties applying to purchase Government land, and any opinion as to the relative rights of the State and national Government after the equitable title has passed to a settler, would seem to be beyond the scope of those duties. But any one at all conversant with the manner in which decisions



and letters emanate from that office, and the diverse rulings of different incumbents, made without reference to or consulting authorities, frequently prepared by clerks for the signature of the Commissioner, in the hurry of business, and that Commissioner not always or generally a lawyer, will attach no weight to such decision, as a legal opinion.

In saying this, I am far from intending any disrespect to the Commissioner, who would not claim, I presume, for the letter purporting to have been written by him, the weight which some have seemed disposed to accord to it.

These suggestions might perhaps more properly appear in the report of the State Auditor, who has the immediate charge of the revenue system, yet as the matters of difference arise upon questions of law, which are expressly placed by the revenue law under the supervision of this office, I have thought it proper, briefly, to advert to the position taken by me upon these questions, with the concurrence of the Auditor, as they are matters of general interest, and of more than ordinary importance.

The authorities and adjudged cases in support of these positions will be found cited in several opinions upon these subjects in the published decisions of this office.

#### APPEALS IN CRIMINAL CASES.

The necessity, or at least propriety of some change in the criminal law, which, while every reasonable facility should be extended to the defendant in a criminal prosecution to bring his case before the Supreme Court for review, would prevent the resort to appeals and writs of error, solely for purposes of delay, has long been felt.

A party now has his choice of numerous methods of review.

*First*—Report of the Judge.

*Second*—Exceptions.

*Third*—Writ of error.

*Fourth*—Motion for new trial in the Supreme Court.

*Fifth*—Mothion for new trial in the District Court.

The case of the State *vs.* Dumphey, tried in the county of Anoka, a few years since, illustrates the abuses to which this facility of appeal is liable. The defendant upon conviction, first, moved for a new trial in the Supreme Court which was denied, and the sentence of the court below af-



firmed. Second, upon the announcement of the decision of the Supreme Court, nearly one year after the conviction, a motion for a new trial was made upon the same grounds in the District Court. This motion being also denied his attorney, upon notice to the Attorney General, moved the Supreme Court for a writ of error, which motion was granted, the Court holding that the remedies by motion for a writ of error and new trial were concurrent, and that the fact that a party had had his case once fully examined, and passed upon by the Supreme Court, was not of itself an absolute answer to a motion for a writ of error, especially if he could show that through the negligence of his attorney, all the points upon which he relied for reversal were not upon the first hearing fully presented. The law should be changed in this respect by confining the defendant's right of appeal to one full and fair hearing in the Supreme Court.

The revisors of the statutes have framed a chapter which will meet the difficulty by confining the party to an appeal or writ of error at his election.

## CONTINGENT FUND.

Balance of 1864 appropriation,	-	-	\$447 00
April 18, 1865, To G. E. Cole, attendance			
on court, -	-	\$44	30
April 24, 1865, To J. S. Fuller, serving			
notices, -	-	9	00
May 30, 1865, To G. E. Cole, attend-			
ance on court, -	-	16	00
Aug. 24, 1865, To Thos. Kirk, attend-			
ance on court, -	-	1	48
Nov. 20, 1865, To C. C. Perkins, clerk's			
fees, -	-	11	04
			<hr/>
			\$81 82
Dec. 1, 1865, By balance unexpended,			\$365 18,

All of which is respectfully submitted,  
 (Signed) G. E. COLE,  
 Attorney General.



## CRIMINAL STATISTICS.

## ANOKA COUNTY.

	Number.	Convi- tions.	Acquittals	Total costs.	Costs collected.	Costs collectible
Larceny, - - -	2		2	\$13 00	\$13 00	
Assault and Battery, - - -	1		1	8 35	8 35	
Violation Liquor law, - - -	3		2	45 00	29 00	
Total, - - -	6		5	66 85	50 85	16 00

[Court.  
One case appealed to District

## BLUE EARTH COUNTY.

Assault with intent to kill, Receiving stolen goods,	1 1		Bound over on preliminary examination to next term District Court. do do do do
Total, - - -	2		

## BROWN COUNTY.

Assault and Battery,*	1	1	
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\*Appeal from Justice Court, sentence in justice court of a fine with costs in both courts assessed. Writ of error granted by Supreme Court, Aug. 10, 1865.



## CARVER COUNTY.

	Number.	Convictions.	Acquittals.	Punish't by Fine	Under influence of intoxicating liquor.	Total costs.	Costs collected.	Paid by County.	Fines assessed.	Fines collected.	
Assault and Battery,	16	14	2	14	1	105 00	105 00	\$30 00		105 00	
Perjury,	1		1					18 00		20 00	
Malicious Mischief,	2	1				45 00	45 00				
Adultery,	1		1			20 00			\$10 00		
Resisting Officer, -	1	1									
Total, -	21	16	4	14	1	170 00	150 00	48 00	10 00	125 00	

[witness  
Paid by prosecuting

## DAKOTA COUNTY.

	Number.	Convictions.	Acquittals.	Nolle Prosequi.	PUNISHMENT.			Total costs.	Costs collected.	Costs collectible.	Paid by County.	Fines assessed.	Fines collected.	
					Imprisonment under 7 years.	Imprisonment in County Jail.	Fines.							
Murder in first degree,	3	3	2		1		3	\$3000 00			\$3000 00			1 examined and not tried
Manslaughter, 2d deg.	1	1						45 00			45 00			Examinat'n, not yet tried
Assault with int. to kill,	10	3	7			3	16 12	101 45	\$97 10		74 35			
Larceny,	24	17	7			1		164 48	116 68		47 50	\$95 00	\$90 00	
Assault and Battery,	1	1	1					4 50			4 50			
Perjury,	1	1	1				1	6 20	6 20			5 00	5 00	Failed to prosecute.
Malicious Mischief,	1	1	1					2 50	2 50		3 00			Settled.
Adultery,	1	1		1				3 00	10 00					Def't's bound ov'r to keep
Resisting officer,	1	1	1					10 00	18 60	\$30 73	18 90			[the peace.
Seduction,	7	3	4					68 23	18 60					
Other offences,	-	-	-											
Total,	51	25	23	1	1	4	17 15	3,405 36	181 08	30 73	3,193 55	100 00	95 00	



FREEBORN COUNTY.

Number.	Convictions.	Acquittals.	Punishment by fine.	PUNISHMENT.		Under influence of intoxicating liquors.	Total costs	Costs collected.	Paid by County.	Fines assessed.	Fines collected.
				Imprisonment	Fines.						
Assault and battery.	2	2	2				\$35 00	\$35 00		\$25 00	\$25 00

FILLMORE COUNTY.

Assault with intent to commit rape.	1	1					41 58		41 58		
Arson.	1			1			182 58		182 58		
Assault and battery.	4	3	1		3	1	41 00	41 00	21 45	20 00	20 00
Other offences.	1	1			1		3 00	3 00		1 00	1 00
Total.	7	5	2	1	4	1	365 16	44 00	245 61	21 00	21 00

GOODHUE COUNTY.

Assault with intent to kill.	1		1				3 75		3 75		
Larceny.	4	1		1			33 87	3 00	30 87	5 00	5 00
Assault and Battery.	4	3		3			50 06	38 06	12 00	15 00	15 00
Obtaining goods under false pretences.	1	1					15 77		15 77		
Malicious mischief.*	2						76 56				
Total.	12	4	5	4			179 95	41 06	62 39	20 00	20 00

\* Bound over to District Court and disposed of.



## HENNEPIN COUNTY.

	Number.	Convictions.	Acquittals.	Imprisonment under seven years.	PUNISHMENT.	Under influence of intoxicating liquors.	Total costs.	Costs collected.	P'd by County.	Fines assessed.	Fines collected.
Burglary,	1	1		1			\$18 70	\$42 18	\$18 70	100 00	100 00
Larceny,	4	3	1		3		42 18	\$42 18		100 00	100 00
Assault and Battery,	21	20	1		20	15	123 20	115 20	8 00	172 00	172 00
Total,	26	24	2	1	23	15	184 08	157 38	26 70	272 00	272 00

## HOUSTON COUNTY.

* Assault with intent to kill,	1						\$10 66		\$10 66		
* Arson,	1						51 00		51 00		
Assault and Battery,	4	4			4		31 00	\$31 00		\$30 00	\$30 00
Malicious mischief,	1	1			1		62 60	62 60		30 00	30 00
Total,	7	5			5		155 26	93 60	61 66	60 00	60 00

\* Examined before justice, bound over to District Court, but no indictment found.



## LE SUEUR COUNTY.

	Number.	Conviction.	Acquittals.	Punish'd by fine.	Total costs.	Costs collected.	Paid by county.	Fines assessed.	Fines collected.
Assault with intent to kill,	1	1			\$170 00		\$170 00		
Assault and battery,	2	2			41 00		41 00	\$35 00	
Total,	3	3			211 00		211 00	35 00	

## MORRISON COUNTY.

Larceny,	1	1	1	Costs charged to complainant and not reported by justice.
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## NICOLLET COUNTY.

Poisoning,	1	1	1		\$41 55	\$5 50	\$41 55	\$40 00	
Larceny,	2	1	1	1	5 50	4 50	1 00	20 00	
Assault and battery,	4	4		4	5 50				
Obtaining goods under false pretenses,	1		1		25 00		25 00		Not yet tried.
Cutting timber on school lands,	1								
Cutting timber on private lands,	1	1		1	38 46		38 46	30 00	Continued.
Keeping house of ill fame,	1								
Total,	11	6	3	6	114 21	10 00	106 01	90 00	



## OLMSTED COUNTY.

Number.	Acquittals.	Nolle prosequi
2	1	1
3	1	1
1	1	1
1	1	1
1	1	1
1	1	1
9	2	1

Assault with intent to kill, -  
 Larceny, -  
 Counterfeiting, -  
 Perjury, -  
 Cutting timber on School Lands,  
 Compounding felony, -

Total,

One default, and one yet in court.

Two yet in court.

1 Passing counterfeit postal currency, declared not indictable under the statutes.

Law declared unconstitutional under which the indictment was framed.







## STEARNS COUNTY.

	Number.	Convictions.	Acquittals.	Nolle Prosequi.	Imprisonment in county jail.	Total costs.	Costs collected.	Paid by County.	Fines assessed.	Fines collected.
Assault and Battery,	6	6				\$54 59	\$54 59	\$6 50	\$40 00	\$40 00
House Breaking,	1		1			6 50				
Obtaining goods under false pretences,	1		1			38 50	10 00	28 50		
*Seduction,	1									
Total, -	9	7	2			99 59	64 59	35 00	40 00	40 00

## WASECA COUNTY.

Violation of liquor law,	1			1		\$10 00		\$10 00		
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## WRIGHT COUNTY.

Larceny,	2	1		1	1	\$25 00	\$25 00	\$25 00	\$20 00	\$20 00
Assault and Battery,	3	3		1		25 00	5 00	5 00		
†Obtaining goods under false pretences,	1			1		15 00		15 00		
Resisting officer,	1			1						
Total, -	7	4		3	1	70 00	30 00	40 00	20 00	20 00

\* Settled by marriage.

† Paid by complainant.



## RICE COUNTY.

	Number.	Convictions.	Acuttals.	Nolle prosequi	PUNISHMENT. Imprison't under 7 yrs in Co. jail.	Under influ- ence of intoxi- cating liquors.	Total costs	Costs col- lected.	Paid by County.	Fines As- sessed.	Fines col- lected.
Murder in first degree, *	1										
Manslaughter in second degree.	1	1					\$55 00		\$55 00		
Larceny, -	4	4			1	1					
Forgery, †	1	1				1					
Counterfeiting, †	1	1									
Assault and battery,	10	10		1	1	6	47 62	\$43 62	4 00	\$135 00	\$131 00
Violation of liquor law,	3		2	1	1		36 00		36 00		
Adultery, -	2		1	1	1		4 50		4 50		
Seduction, -	1			1							
Total,	25	15	3	4	1	8	138 62	43 62	99 50	135 00	131 00

## RAMSEY COUNTY.

	Number.	Convictions.	Acuttals.	Nolle prosequi	PUNISHMENT. Imprison't under 7 yrs in Co. jail.	Under influ- ence of intoxi- cating liquors.	Total costs	Costs col- lected.	Paid by County.	Fines As- sessed.	Fines col- lected.
Assault and battery -	4	1	3				\$30 00		\$30 00	\$100 00	
Larceny, -	1	1					10 00		10 00	50 00	
Other offences,	1		1				10 00		10 00		
Totals,	6	2	4				50 00		50 00	150 00	

\* Not yet arrested. † Bound over awaiting trial. ‡ Awaiting trial.



Dodge, McLeod, Martin, Mille Lac, Pine, Sherburne, Washington and Wabashaw, report "no prosecutions."

Benton, Isanti and Meeker, no attorney.

Chisago, Faribault, Mower and Winona, no report.

### SUMMARY OF COUNTY ATTORNEYS' REPORTS.

		Number.	Convictions.	Acquittals.	Under influence of intoxicating liquors.
1	Murder in first degree, -	4	2	1	3
2	Manslaughter in second degree, -	2	2		
3	Assault with intent to kill, -	7	1		
4	Arson, - - - - -	2		1	
5	Burglary, - - - - -	1	1		
6	Larceny, - - - - -	37	11	23	
7	Forgery, - - - - -	1			1
8	Counterfeiting, - - - - -	2			
9	Assault and Battery, - - -	109	93	16	
10	Violation of liquor law, - -	17	2	2	
11	House breaking, - - - - -	1		1	
12	Obtaining goods under false pretences, - - - - -	3	2		
13	Perjury, - - - - -	2		2	
14	Malicious mischief, - - - -	5	5		
15	Cutting timber on school lands, -	2			
16	Adultery, - - - - -	4	1	2	
17	Resisting officers, - - - - -	2	1		
18	Keeping house of ill-fame, - -	1			
19	Seduction, - - - - -	3	1	2	
20	Assault with intent to commit rape,	1		1	
21	Compounding felony, - - - -	1			
22	Cutting timber on private lands,	1	1		
23	Assault with intent to do great bodily harm, - - - - -	1	1		1
24	Other offences, - - - - -	8	4	4	
	Total, - - - - -	218	128	55	5

Total costs, - - - \$5,421 03  
 Costs paid by County, 1,247 43  
 Fines collected, - - - 980 00

Total costs collected, \$1,016 12  
 Fines assessed, - - - 1,043 09

#### PUNISHMENT.

By imprisonment in State Prison under seven years, - 5  
 By imprisonment in County jail, - - - - - 6  
 By fine, - - - - - 80